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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,326	04/08/2004	Karl P. Ahrens	6384-0012-1	8519
35301	7590	02/28/2005		
MCCORMICK, PAULDING & HUBER LLP CITY PLACE II 185 ASYLUM STREET HARTFORD, CT 06103			EXAMINER LOCKETT, KIMBERLY R	
			ART UNIT 2837	PAPER NUMBER

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/820,326	AHRENS, KARL P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kim R. Lockett	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 7-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3 and 4 of U.S. Patent No. 6348647 in view of Druz.

Claims 3 and 4 of U.S. Patent No. 6348647 discloses the use of a ocarina comprising a body comprising at least one wall, a surface positioned adjacent to and cooperative with the wall, wherein said wall, said surface, and said cover define a sound chamber.

Claims 3 and 4 of U.S. Patent No. 6348647 does not disclose the use of a recess positioned adjacent a cover.

WO 03/091986 A1 discloses the use of an ocarina with a recess positioned adjacent a cover and a plurality of apertures disposed within the body, said apertures being configured to facilitate airflow through the body (see abstract)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by U.S. Patent No. 6348647 with the recess positioned adjacent a cover in order to facilitate airflow communication.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Druz in view of WO 03/091986 A1.

Druz discloses the use of an ocarina comprising a sound chamber having a plurality of apertures that facilitate airflow communication through said sound chamber to produce a tone (see figure 1) and a recess disposed at an inner surface of the sound chamber, at least one of the apertures being in register with said recess (see figure 4).

Druz does not disclose the use of a recess positioned adjacent a cover.

WO 03/091986 A1 discloses the use of an ocarina with a body comprising at least one wall(12), a surface(16) positioned adjacent to and cooperative with the wall, wherein said wall, said surface, and a cover(14) define a sound chamber. WO 03/091986 A1 further discloses the use of a windway through recess(20), a fipple

Art Unit: 2837

window(24), and recesses that have toneholes (26) that are in register with the recesses, whereby the recess is less in width and depth of the sound chamber. WO 03/091986 A1 further discloses that toneholes can be selectively obstructable by a person playing an ocarina (page 4, lines 1-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ocarina as disclosed by Druz with the recess adjacent the cover as disclosed by WO 03/091986 A1 in order to oscillate air in an ocarina to produce an audible tone.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Druz in view of U.S. Patent No. 6348647 and Fowler.

Druz and WO 03/091986 A1 do not disclose the use of an ocarina made of clay.

Fowler et al disclose the use of a pentatonic ocarina. Fowler further discloses that the uses of ocarinas made from clay are well known in the art (column 1, lines 30-35).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ocarina as disclosed by Druz with the recess adjacent the cover as disclosed by WO 03/091986 A1 and the clay as disclosed by Fowler in order to generate a tone that is easy to produce.

6. Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at [www.uspto.gov](http://www.uspto.gov).

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615**, after 2/3/04 my new number will be **(571) 272-2067**. The examiner can normally be reached on Tuesday through Friday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107.

  
**KIMBERLY LOCKETT**  
**PRIMARY EXAMINER**